1949. **File No.** S. Bel 5 / 49

Legal Department-

A BRANCH

Subject:- Suit Belgaum

Civil Suit No. 81 of 1948

Babulal Dada Sanadi -- Plff

Vs.

The Province of Bombay -- Deff and others

For partition of the Sanadi lands and for possession of half share therein.

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Babulal Dada Sanadi

Vs.

Province of B'bay and others.

For partition of the Sanadi land and for possession of half shar there in.

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Received on 14.9.1948

Sd/- X X X

Clerk of the Court.

Special Jurisdiction Suit No.81/48

In the Court of the Civil Judge, Senior Division, at Belgaum.

1. Babalal Dada Samadi, caste Muslim, agriculturist age 52 of Kothali in the Chikodi Taluka, Belgaum District ... ...Plff.

Against.

1. Sileman Dada Samadi, age 62, caste Muslim, Occupation Samadi of Kothali, Taluka Chikodi.
2. The Province of Bombay .....Defts

(Summons to be served on the Collector of Belgaum)

Claim Rs. for Court-fees 81-14-0 & Jurisdiction 8005-0-0

Plaintiff begs to state as follows:-

A) Description of the lands of the parties in Kothali of the Chikodi Taluka is as follows:-

R.S.No.	Acreage	Assessment.	Assessment Value.
24	4-23	6-8-0	
30	2-26	6-0-0	6000/-
70	4-24	4-0-0	4000/-

The following property has come to my share as detailed

B)

0		1-20	3-1-0

Boundaries:-

East:- R.S. No. 39.

West:- " 13

South:-Part of S.No.40 allotted, to deft's share.

North:- R.S.No.29.

0.	1st strip	0-30	0-10-6

Boundaries.

East :- Part of this S.No. allotted to Deft' South Share

West:- S.No. 71

North:- Nalla

0 II strip. 1-22

Boundaries.

East:- Nalla.

South:- Government road.

North:- Part of this S:No allotted to Deft's share.

2. The lands described in para 1(A) are the ancesstral Sanadi service lands of the family of plaintiff and defendant No.1 granted to the said family prior to the British Rule for -- performing the Sanadi service. The plaintiff and the defendant No. are ~~xxx~~ bothers of the whom the latter being the elder brother has been performingSanadi service, after the death of their father Dada Kadkhan Sanadi but both the brothers were enjoying the said lands after the death of their father till recently. On account of differences in the family plaintiff demanded in 1945 his half share in the said lands from the defendant who however refused to give the Plaintiff's half share therein.

3. Defendant No.2, the Provincial Goverament of Bombay claim that the Sanadi lands are not partible though the High Court of Bombay has been consistently holding the view ~~xfor~~ over 50 years that the Sanadi lands are partible. In order that the Defendant No.2 should not interfere with the decision of the Civil Court (awarding the Plaintiff's half share in the said lands from the defendant No.1) under the Watan Act, Plaintiff decided to file a suit for partition on his half share therein in 1945 against Defendant No.1 and gave a notice under Section 80 of the Civil Procedure Code on 7.7.1945 to Defendant No.2. The Provincial Gover Defendant No.2 on receipt of the said notice, sent the same for enquiry and report to the Mamlatdar,Chikodi who accordingly sent a notice to the Plaintiff requesting him to attend his office and to make a statement regarding the same. Accordingly Plaintiff attended ~~hixxxffice~~ the Mamlatdar's office on 12.9.1947 and made his statement in the said enquiry. At that time defendant No. 1 attended of his own accord the Mamlatdar's office at the time of t enquiry~~xx~~ on that date viz. 12.9.1947. The Extra Head Karkun befor whom plaintiff made his statement casually suggested to both Plaintiff and defendant no.1 to compromise their dispute. Accordin both of them undertook to do so the following day on 13.9.1947 and through the intervention of the Panchas,both defendant No.1 and

Plaintiff compromised their dispute as follows:

" Defendant No.1 should give amicably as the Plaintiff's share the partioms of two Sanadi lands as described in para 1(b) above to the plaintiff after the crops standing thereon would be removed by the defendant No.1 and on account of the profits of the said portions for the current year 1947.48 a sum of Rs.250/- should be paid to plaintiff by defendant No.1. and Plaintiff should withdraw the notice given to the Provincial Government by making a statement to the effect before the Extra Head Karkun".

In pursuance of the said compromise, Defendant No.1 paid Rs.100/- in cash out of Rs.250/- to plaintiff and Rs.50/- by means of the Havala and for the remaining Rs.100/- Deft No.1 passed a promissory note for Rs.100/- in favour of plff. on 13.9.1947 in the Chikodi Mamlatdar's petition and bond writers' room. And plaintiff got an application written by the writer of the said promissory note, requesting the Extra Head Karkun not to proceed with the abovesaid enquiry but to file the said proceedings as being not prosecuted by the Plaintiff and the Extra Head Karkun thereupon filed it on that day, viz. 13.9.1947 and Plaintiff even made a statement before him confirming and admitting the contents of the said application. The Revenue Ahthorities accordingly filed the proceedings without further hearing.

4. In purwuance of the above said compromise after the removal of the standing crops for 1947-48 Defendant No.1 demarkated the said portions in S.Nos.40 and 70 as described in para 1(B) above and handed over possession of the same to the plaintiff. Shortly thereafter there were again quarrels between plaintiff and defendant. No.1 on account of the promissory note mentioned above. Plff therefore gave a notice on 21-3-48 in that connection which was received by Defendant No.1 who gave a reply denying the abovesaid compromise and setting up a false story about the executio the said promissory note.

5. Plaintiff avers that he is in possession of the portions of S.Nos. 40 and 70 in suit as described in para 1(B) of this plaint but the defendant no.1 is illegally and unjustly causing obstrution to the plaintiff's enjoyment of the same. Hence this suit for a permanent injunction enjoining defendant no.1 from obstruction the Plaintiff in his enjoyment of the said portions of the suit lands.

6. If for any reasons, however, the Court were not satisfied of the truth of the above said compromise and Plaintiff were not awarded the relief as stated in para 5 above, Plaintiff in the alternative claims a half share in the lands described in para 1(A) of this plaint by a fair and equitable partition through the Collector of this District, as the defendant No.1 refuses to give that share in the alternative, the plaintiff is obliged to file this suit for the same together with mesne profits from date of suit till recovery of possession and costs of this suit.

7. The cause of action for this suit arose in April 1948 when the defendant no.1 obstructed the Plaintiff in his wahiwat of the suit lands and denied the compromise as stated above. Notice under sec.80 C.P.C. is served on the Collector of Belgaum and Secretary Provincial Government.

8. As the lands in suit are situated within the special jurisdiction of this Court on account of the fact that the Provincial Government is a party to this suit, this Court has jurisdiction to try this suit.

9. Deft No.2 is made a party to this as the Provincial Government of Bombay in order that a decree as prayed for by the Plaintiff in this suit may not be defeated by the Collector of Belgaum by resorting to proceedings under the Watan Act.

10. Court fee on the ½ assessment of the suit lands i.e., -4-0x 7½- 61-14-0. so on amount of Rs.6.9.0 and Rs.0-8-0 plus injunction relief is paid. Value for jurisdiction is Rs.8000/- plus Rs.5/--- 8005/-.

11. Plaintiff, therefore, prays:-

1. That the defendant no.1 be enjoined from any obstruct the Plaintiff's enjoyment of the portions of the lands as described in para 1(B) above or in the alternative.

5 T

for possession of half of the lands described in para 1(A) above by fair and equitable partition under section 54 of the Code of Civil Procedure from Defendant No.

2. for future mesne profits from date of suit till the delivery of possession subject to order 20 Rule 12 C.P.C. if the alternative relief were granted.

3. Costs of this suit from Defendant No.1

4. For such other relief as the Plaintiff is entitle

Belgaum
14.9.1948.

d/- X X X.

I, Babalal Dad Sahadi of Kothali To-day at Belgaum do hereby declare on solemn affirmation that what is stated in all paras of this plaintx are true to my own knowledge and belief.

Declared this 14th day of September 1948.

Sd/- X.X.X.

Belgaum Civil Suit No.81 of 1948.

The plaintiff in this suit claims from defendant No.1 who is his elder brother, partition and possession of his half share in the suit lands which are Shet Sanadi lands. He has impleaded Government on the ground that there is a conflict between the views of Government and the law laid down by the High Court as regards the character of Shet Sanadi holdings. The defence is that there is no cause of action against Government who has not as yet passed any order affecting the plaintiff's interests if any, and that, in the alternative the defences taken in Belgaum suit No.499 of 1946 are applicable to this case also.

Defence of the suit may be sanctioned on the lines of the appended brief.

The brief as amended may be approved

9 of 37

Special Jurisdiction Suit No.81/48.

In the Court of the Civil Judge,Senior Division,
at Belgaum.

1. Babalal Dada Sanadi, caste Muslim,agriculturist age 52 of Kothali in the Chikodi Taluka, Belgaum District..... Plaintiff.

Against.

1. Sileman Dada Sanadi, age 62,caste Muslim, Occupation Sanadi of Kothali,Taluka Chikodi.
2. The Province of Bombay..... Defendants.

The following is the written statement of Government defendant No.2 inthis suit.

(1) The plaint discloses no cause of action against this defendant. This defendant has not passed any order or taken any action affecting the interest,if any, of the plaintiff in the suit lands. It is therefore submitted that this defendant should be struck off the suit and its costs awarded.

2. If however, the Court is pleased to hold that the plaintiff has a cause of action against this defendant, then it is submitted that the suit is barred under clause (i) and (iv) of section 4(a) of the Bombay Revenue Jurisdiction Act.

3. The plaintiff's allegations in paragraphs 2 and 3 of the plaint are not admitted. The plaintiff is not entitled to demand partition of the suit landswhich are Shet Sanadi lands assigned as remuneration for service of Shet Sanadi. This defendant has no knowledge of the alleged amicable settlement between the plaintiff and the defendant No.1 and is not bound by it.

4. It is submitted that the office of the Shet Sanadi and the lands attached thereto are not hereditary and are not governed by the Watan Act. The lands are held for the performance of service and if such lands or part thereof,come into the possession,by succession or otherwise,of any person other than the person who actually performsservice, the Collector has the power to resume the lands under Rules 4 and 6 of the Resumption Rules.

5. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader,Belgaum.

P.T.O

1/283 29

I, District Government Pleader, Belgaum do hereby declare that what is stated in paragraphs 1 to 5 is true according to the information received and believed to be true. This verification is made at on the day of 194 .

District Government Pleader, Belgaum.

KML/

O.S.No. 81 of 1948

13 Ex. 37.

I S S U E S.

1. Whether plff proves that the shet sanadi lands in dispu partible and heriditory?

2. Whether plff proves that the compromise dated 13-9-47, partition and allotment of property 1B to his share & delivery of possession by deft.1 to him.

3. Whether plff proves ~~that~~ his possession of property 1B suit?.

4. Whether plff entitled to injunction?

5. Whether plff's claims are whithin time?

6. Whether deft.1 proves the old partition and allotment property 1A to his share for the sake of rendering ser

7. Whether deft.1 has been the sole grantee of suit propd thus its exclusive owner?

8. Whether plff proves his ½ share in suit property 1A? he is entitled to ~~xxxxxxxx~~ partition?

9. Whether deft. 2 is liable? If so, what ~~xxxxx~~ shall

No more sought.

2-8-1949.

S/D.
Civil Judge.

To

*Revenue Department,
*The Collector of Belgaum,
*The Commissioner, Southern Division,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Issued
CRP
13/12/49

Submitted after issue
Filed in S. Belgaum 49 (mem)
15.12
S.A.G.P.
15/12

Suits :

Belgaum

for partition of the *Sanadi* lands and for possession of half share therein.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 8296.

Bombay Castle, 22nd July 1949.

Letter from the Collector of Belgaum, No. L.A.W./717, dated 25th March 1949—

In the Court of the Civil Judge (Senior Division) Belgaum
Civil Suit No. 81 of 1948.

Babulal Dada Sanadi ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendants and another

Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T., dated 16th April 1949 —Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Belgaum, No. 7613, dated the 8th July 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

[*P.T.O.*

Lino Leg. H 63—1

5/17

BELGAUM CIVIL SUIT No. 81 OF 1948.

CHRONOLOGICAL STATEMENT OF FACTS.

This is a suit for partition of lands. The Plaintiff claims partition of the suit lands and possession of the half share therein from Defendant No. 1 who is his elder brother.

2. The suit lands are admittedly assigned as remuneration for the service of *Shet Sanadi*. The Defendant No. 1 is the officiating *Sanadi* and is in possession of the service lands.

3. On 7th July 1947, the Plaintiff gave a notice to Government under section 80 of the Civil Procedure Code expressing his intention to file a suit against Defendant No. 1 for partition of the lands and possession of his share. He stated that Government would have to be made a party to the suit because of the conflict of opinion between Government and the High Court as regards the nature of the *Shet Sanadi* tenure. However, on 13th September 1947 he stated before the Mamlatdar that he had no desire to file the suit and the papers were therefore filed.

4. However, on 6th July 1948 the Plaintiff gave a similar notice under section 80 of the Civil Procedure Code and filed the suit on 14th September 1948 in the Court of the Civil Judge, Senior Division, Belgaum.

GROUNDS OF DEFENCE.

1. *No cause of action.*—The Plaintiff asks for partition of the *Sanadi* lands and for possession of his half share therein. He has impleaded Government because of the conflict between the views of Government and the law as laid down by the Civil Court as regards the nature and character of *Shet Sanadi* holdings (see Phadnis Watan Act p. 240), and in order that Government may not interfere with the decision of the Civil Court. In other words although he seeks no relief against Government, he has joined Government as a party to the suit so that Government may be bound by the decree. The suit lands are however in the possession of Defendant No. 1 who is the officiating *Sanadi*. Government has taken no action or passed no order affecting the interest, if any, of the Plaintiff in the suit land. It should therefore be contended that the plaint discloses no cause of action against Government. The mere fact that the views of Government as regards *Shet Sanadi* holdings are different from law laid down by the Civil Courts to which Government was not a party, does not entitle the Plaintiff to implead Government in a suit of this nature. It is only if and when the Plaintiff succeeds in this suit and Government has taken any action or passed any order inconsistent with his rights under the decree that he will have a cause of action against Government. The District Government Pleader should therefore urge before the Court that Government should be struck off from the suit and the Plaintiff should be directed to pay Government's costs.

2. If however the Court holds that there is a cause of action against Government the Plaintiff's alleged right to claim partition and separate possession of half the share in the land should be denied. The Plaintiff claims partition on the footing that the lands are *watan* lands,

but the position of Government with regard to *Shet Sanadi's* is that they are not *watandars*, their office is not hereditary and the lands held by them as remuneration for service are not *watan* property under the Bombay Hereditary Offices Act, 1874. In this connection the attention of the District Government Pleader is invited to the brief accompanying G. R., L. D., No. 4733 of 8th May 1947 sanctioning the defence of Belgaum Civil Suit No. 499 of 1946. The defences pleaded in that brief will apply *mutatis mutandis* to the facts of this case also and they are therefore not repeated here.

Assuming without admitting that the suit lands are *watan* lands, they would not be liable to partition for the grant being of lands for the remuneration of the officiator, they would be deemed to be assigned for service and as such must remain with the officiator; and in case they are partitioned, the lands allotted to the Plaintiff would be liable to be resumed and restored to the officiator defendant either under the Watan Act or the Resumption Rules of 1908.

Lastly it should be contended that the suit is barred by clause (a) of section 4 of the Bombay Revenue Jurisdiction Act 1876, in that it relates to a claim against relating to lands declared to be held for service.

Decree if the Govt (debt) be awarded in full.
SD. B.V. Gauli
Dist. Govt. pleader
24/12/50

SD. D.A. Chougle
Civil Judge S.D.
24-12-1950

Order

Filed order for costs will be passed on plaint.

SD.
Civil Judge S.D.
24/12/50 Belgaum

Vide D.C.P's letter No. 291 dt- 19-6-50 57

(R.I.No. 1092 761

D E C R E E

Reg. O.S.No. 81 of

IN THE COURT OF CIVIL JUDGE, S.D, AT BELGAUM. 21

Ex.

1. Babalal Dada Sanadi, case Muslim, Agri.
Age 52 of Kothali in Chikkodi Taluka. ... .. Plff

against.

1. Sileman Dada Sanadi, age 62, Caste Muslim,
Occ. Sanadi of Kothali Taluka Chikkodi,
2. The Province of Bombay ... ... Defts.

(Deftx 2's name is deleted as per plff's pursis Ex.58).

Suit filed on :- 16-9-1948.

Suit admitted on 15-9-1948.

Claim Rs:- 61-14-0 + 5-0-0 for Court fees.

" 8005-0-0 for Jurisdiction.

Plff sues:-

****

O R D E R.

This day the 28th Feb.1950, suit comes for decision before Shri N.V.Ranasubhe Civil Judge, S.Dn, Belgaum in the presence of Shri D.A.Chougla pleader for the plff and Shri B.R.Majali Pleader for deft No.1 and B.V.Jakati Pleader for deft No.2.

Suit is dismissed. Plff to pay costs of Deft No.1 and bear his own.

BILL OF COSTS

	For Plff. Rs.-As.-Ps	For Deft No.1 Rs.-As.-Ps	For Deft No.2. Rs.-As.-Ps
1. Stamps on plaint.	7 - 0 - 0	Nil	Nil
2. Vakalat.	0 -10 -0	0 -10 -0	0 -10 -0
3. For witness	30 - 0 -0	40 - 0 -0	Nil
4. For applications	4 - 6 -0	3 -10 -0	7 - 8 -0
		11 - 4- 0	
5. Fess to Pleaders	250 -2 - 0	250 - 2- 0	250 - 2 - 0
6. For process	20 - 0 -0	5 - 0- 0	Nil
7. For Copying	2 -3 -3	11 - 5- 9	Nil
Total			

Bill of Costs(Continued)

	For Plff Rs.-As.-Ps.	For Deft No.1 Rs.-As.-Ps.	For Deft No.2 Rs.-As.-Ps.
Total	315 - 6 -3	323 - 15 -9	258 -4 - 0
Rejected Costs.			
For Pllications.	Nil	5 - 10 - 0	7 - 8 - 0
Total	Rs. 315 - 6 - 3	318 - 5 -9	250 -12 - 0

This day ~~Sixxxxxxxxxxxx~~ the 28th February 1950 civ
under my signature and seal of the court.

Sd. C.K.Chougla.
Clerk

Sd. N.V.Ranasubhe.
Civil Judge,
Belga

Sd. D.A.Chougla
Pl. for plff.

Sd. P.R.Majali.
Pl. for deft.No.1

2357

Suits:
Belgaum.
for partition of the Sanadi lands and for possession of half share therein.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1746-E
Bombay Castle, 25th ~~December~~ January 1954.

Read Government Resolution, Legal Department No. 8296, dated the 22nd July 1949.

Letter from the District Government Pleader, Belgaum No. J. 122, dated the 10th March 1950, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Belgaum on the 28th February 1950, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Belgaum.
Civil Suit No. 81 of 1948.

Babulal Dada Sanadi ..... Plaintiff.
versus
The Province of Bombay. ..... Defendants and another.

" Suit is dismissed. Plaintiff to pay costs of Defendan No. I and bear his own.".

Letter from the District Government Pleader, Belgaum No. 241, datedthe 20th June 1950, forwarding uncertified copies of the judgment and decree.

Resolution:- The result of the suit is recorded.

By order and in thename of the Governor of Bombay.

(R.T.Katarki)
Deputy Secretary to Government.

To

The Revenue Department.

The Collector of Belgaum.

The District Government Pleader, Belgaum.

IL.
21.12.

Submitted for signature
Sd
23/11

S S Gokhale 23/11 DS (Civil)

File in S. Belgaum 5/49

Illegible

27/1

S.S. 27/1